United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANT

in the

UNITED STATES COURT OF APPEALS
for the District of Columbia Circuit

September Term, 1965

No. 19,815

647

MEYER CAPLAN,

Appellant

v.

DALE C. CAMERON, Superintendent,
St. Elizabeth's Hospital,

Appellee.

Wilmer Mechlin
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States Court of Appeals)

QUESTION PRESENTED

Whether a person committed under Title 24, D.C. Code Section 301 and not recovered but in remission from a mental disease (schizophrenic reaction, paranoid type), was entitled to a conditional release under Section 301(e), if he would not be dangerous to himself or others in the reasonable future under certain circumstances and as a practical matter could not establish those circumstances while in continued confinement.

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UNITED STATES COURT OF APPEALS

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No. 19,815 September Term,1965

MEYER CAPLAN,

Appellant

v.

DALE C. CAMERON, Superintendent,
St. Elizabeth's Hospital,

Appellee.

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal in forma pauperis from a final order of the United States District of the District of Columbia discharging a Writ of Habeas Corpus (H.C.405-65) and dismissing a petition filed pursuant to 28 U.S.C.2241 and 24 D.C.Code 301. Under the Order of this Court filed February 9, 1966, appellant's brief is to be filed within thirty days from the date of filing of the supplemental record or on or before April 15, 1966. This appeal is prosecuted pursuant to the Act of June 28, 1948, 62 Stat.929, 28 U.S.C.1291, and such other acts of Congress as are applicable hereto.

STATEMENT OF FACTS

The appellant, Meyer Caplan, a resident of Baltimore, Maryland, was arrested in the District of Columbia on November 14, 1964 and charged with assault with a dangerous weapon. After a pre-trial mental examination, which found him competent to stand trial, he was tried in the United States District Court for the District of Columbia in Criminal Case No. 1123-64 and found not guilty by reason of insanity. Thereupon, on February 24, 1964, he was committed to St. Elizabeth's Hospital by Order of the District Court, pursuant to Title 24, D.C.Code 301(d) (1961 Ed.) and confined in John Howard Pavilion (Tr.33). The charge was upon indictment for a felony punishable under Title 22, D.C.Code 502 by imprisonment for not more than ten years.

On September 2, 1965, a Petition for Writ of Habeas Corpus (H.C.405-65) was filed, alleging that respondent was arbitrary and capricious in refusing to certify petitioner for release pursuant to Title 24, D.C.Code 301(e). (Petit.3)

At the hearing on the Petition the only witnesses were appellant and Dr. William Schwartz, a psychiatrist on the staff of St. Elizabeth's Hospital called by appellee. At the hearing it was shown that appellant was then 47 years old (Tr.4), had stopped his formal education at junior high school but taken courses at Maryland University (Tr. 9,10), was a resident of Baltimore and for most of his adult life had been

gainfully employed in that City in selling and other occupations. (Tr.10-13) During that time, appellant was confined in Maryland mental institutions for brief periods on three occasions, two voluntary (Tr.33) and the third after arrest on a charge of assault with a dangerous weapon. (Tr.15,16) But neither then nor in the crime for which he was tried in the Distrist Court, had he actually harmed anyone (Tr.5,15) and in both of those instances he was without a job. (Tr.30,31)

The hearing further showed that appellant had paranoid schizophrenia,[1/] a mental illness that is never completely cured and would always make appellant more susceptible than the normal person to becoming psychotic. (Tr.46) However, under treatment at the Hospital appellant had so improved that the mental illness was in remission and he had no symptoms of the psychosis. (Tr.34) Dr. Schwartz testified that, so long as the illness was in remission, appellant would not be dangerous to himself or others and that, if he had a job and a place to live, it would remain in remission. (Tr.37,38,45) Appellant has no business contacts, except in Baltimore (Tr.21), and no family except a brother who previously helped him but will now have nothing to do with him. (Tr.8,36) Appellant wanted to go to Baltimore, where he had many business contacts, and arrange

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1/ Schizophrenic reaction, paranoid type (Tr.38)

for a job and a place to live. (Tr.19-21,41) Even though, as Dr. Schwartz conceded at the hearing, it would be difficult for appellant to arrange for a job and a place to live anywhere while confined in the John Howard Pavilion at St. Elizabeth's Hospital (Tr.46), appellee conditioned the certification of appellant for conditional release upon his arranging in advance for a job and a place to live. (Tr.36,40)

Notwithstanding the foregoing showings at the hearing, the District Court in its Findings of Fact and Conclusions of Law, held that the failure of appellee to certify appellant for conditional release was not arbitrary and capricious and discharged the Writ and remanded the appellant to the custody of the appellee. It is from this Order of discharge and remand that the instant appeal lies.

STATUTE INVOLVED

Title 24, D.C.Code 301(e)(1961 Ed.) provides:

> "* * * Where, in the judgment of the superintendent of such hospital, a person confined under subsection (d) above is not in such condition as to warrant his unconditional release, but is in a condition to be conditionally released under supervision, and such certificate is filed and served as above provided, such certificate shall be sufficient to authorize the court to order the release of such person under such conditions as the court shall see fit at the expiration of fifteen days from the time such certificate is filed and served pursuant to this section:

> "Provided, That the provisions as to hearing prior to unconditional release shall also apply to conditional releases, and, if, after a hearing and weighing the evidence, the court shall find that the condition of such person warrants his conditional release, the court shall order his release under such conditions as the court shall see fit, or, if the court does not so find, the court shall order such person returned to such hospital."

STATEMENT OF POINTS

Where the record shows that appellant's mental illness, although incurable, is in remission and will remain in remission and not cause appellant to be dangerous to himself or others in the reasonable future, if appellant has a job and a place to live, and a conditional release is the only practical way of arranging such circumstances, the District Court erred:

(a) in holding that appellee was not arbitrary and capricious in refusing to certify appellant for a conditional release and in itself failing to grant such a release.

SUMMARY OF ARGUMENT

A person committed to St. Elizabeth's Hospital and confined in John Howard Pavilion upon a finding of not guilty by reason of insanity on a felony charge, is not entitled to an unconditional release unless he has recovered his sanity and is entitled to a conditional release only if the Superintendent of St. Elizabeth's Hospital certifies or a preponderance

of the evidence establishes that he is in such a condition as in the reasonable future not to be dangerous to himself or others. However, if it is shown that in his present condition he is not dangerous to himself or others and that that condition will continue under certain circumstances and a conditional release is the only practical way he can arrange to establish those circumstances, unless he is given a conditional release it is practically impossible for him ever to be released.

In providing for both unconditional and conditional releases, Congress cannot have intended the imposition of unreasonable conditions upon the conditional release of persons who, though suffering from an incurable mental illness, under certain circumstances will not in the reasonable future be dangerous to themselves or others. And particularly must this be so, where, as here, the person has a past history of useful existence to society and only two instances over a long period in which his mental illness caused him to commit crimes, at the times of which he was without a job and in neither of which did he actually harm anyone. In such case, indefinite continuance of the retention of the person benefits neither the person nor society.

ARGUMENT

I.

Where it is shown that a person, while not recovered from his mental illness, is now in a condition in which he will not in the reasonable future be dangerous to himself or others and that condition will continue under certain circumstances, it is illegal to deny him a conditional release when it is otherwise impractical to establish those circumstances.

With respect to Point I, the only point on this appeal, appellant desires the Court to read the following pages of the reporter's transcript: Tr. 5, 8-13, 15, 16, 19-21, 30, 31, 33, 34, 37, 38, 41, 43, 45, 46.

A person who has not recovered from the mental illness responsible for the crime of which he was acquitted by reason of insanity, is not entitled to an unconditional release from St. Elizabeth's Hospital under Title 24, D.C.Code 301(e). Overholtzer v. O'Beirne, 112 U.S.App. D.C.267,302 F.2d852 (1961). Nor is he entitled to a conditional release unless his condition is such that he will not in the reasonable future be dangerous to himself or others. Hough v. United States, 106 U.S.App. D.C. 192,271 F.2d 458 (1959). But the very fact that Congress made provision in Section 301(e) for a conditional release makes plain its intention to permit the release of a mentally ill person under circumstances that in the reasonable future will prevent him from becoming a danger to himself or others. In

providing for a conditional release, Congress must therefore have meant that a mentally ill person, who under certain circumstances will not be dangerous to himself or others, can be released, if those circumstances are establishable.

The evidence adduced at the hearing in the District Court established that appellant is suffering from paranoid schizophrenia (Tr.38), an incurable mental disease (Tr.46), but one subject to remission and, when in remission, not rendering a person dangerous to himself or others (Tr.46). A person suffering from this disease, even when in remission, is subject to the return of the psychosis under less stress than would produce a psychosis in a normal person but, absent such stress, is no more dangerous than the normal person.(Tr.46).

Appellant's mental illness or psychosis is in remission. (Tr. 34) He, therefore, is now in a condition in which he is not dangerous to himself or others. In the opinion of appellee's witness, Dr. Schwartz, appellant will remain in his present condition if he has a job and a place to live (Tr.45) and the soundness of this opinion and the importance of having a job to the continued remission of appellant's psychosis is borne out by the uncontroverted evidence that the only two instances in which appellant's mental illness caused him to be dangerous to others occurred when he was without a job. (Tr.30,31)

While there is no dispute that appellant needs a job and a place to live to prevent recurrence of the dangerous symptoms of his psychosis, appellee conditions or predicates certification of appellant for a conditional release upon appellant's having a job and a place to live. (Tr.36,40) Appellant's only family, his brother, will not help him (Tr.36) He has no business contacts in Washington (Tr.21) but the evidence indicates that he has such contacts in Baltimore (Tr.21), where he has lived all of his life and had several jobs. (Tr.10-12) As Dr. Schwartz undoubtedly recognized, in agreeing that it would be difficult for appellant to obtain a job while confined in St. Elizabeth's Hospital (Tr.46), the opprobrium attached to a request for a job by letter, with the Hospital the return address, obviously would mitigate against success in obtaining a job, even in Baltimore. On the contrary, there is no evidence that appellant could not arrange for a job and a place to live, if given opportunity to go to Baltimore and interview prospective employers in person, using whatever contacts he may have.

Despite recognizing that appellant has no contacts through whom he might obtain a job except in Baltimore, appellee indicates that appellant would not be conditionally released to go to Baltimore under any conditions. (Tr.41) Although none is given, the reason presumably is that it is more convenient for appellee to supervise or secure the return of a condi-

releasee in the District of Columbia than in Baltimore. Granting this, the power to secure the return of a conditional releasee for breach of a condition of his release unquestionably extends to both cities. Except for appellee's convenience, there therefore is no reason to declare Baltimore off-limits.

As appellant's psychosis is both incurable and now in remission, it is hardly likely that continued confinement will work any improvement either in his mental condition or in his prospects of obtaining a job and a place to live. Wherefore, if arranging for a job and a place to live is a condition precedent to the grant of a conditional release and it is impractical to meet that condition now, there is every likelihood that his confinement will continue to the end of his natural life.

Under Section 301(e) of Title 24 of the Code, appellee can propose and the Court can impose such conditions in a conditional release as to ensure that the conditional releasee will not in the reasonable future be dangerous to himself or others. Hough v. United States, 271 F.2d 458,461. While there was no evidence at the hearing as to conditions subsequent that might be imposed upon appellant's conditional release, it cannot be impossible in this case to devise a conditional release containing conditions that would permit appellant to go to Baltimore to look for a job and still safeguard appellant and the

public from himself. But the issue here is not as to conditions subsequent in a conditional release. Instead, the only issue is whether appellee was arbitrary and capricious in conditioning the certification of appellee for a conditional release upon his prearrangement for a job and a place to live.

Appellee's action in refusing a conditional release was not arbitrary and capricious if it had a reasonable or rational basis and the burden was upon appellee to prove by a preponderance of the evidence that it had no such basis. Robertson v. Cameron, 224 F.Supp.60,62 (1964). What was the evidence? It was that appellant was a paranoid schizophrenic, but in remission and in that condition not dangerous to himself or others; that that condition would continue if appellant had a job and a place to live; and that it was impractical if not impossible for appellant to arrange for a job and a place to live without going to Baltimore.

Appellant therefore did prove by a preponderance of the evidence that appellee in refusing to certify him for a conditional release unless he prearranged for a job and a place to live, was denying him the only practical way of arranging the circumstances under which he would not be dangerous to himself or others in the reasonable future. Appellee offered no evidence of a reasonable or rational basis for his action and, save for such evidence, appellee in imposing an impractical

condition upon appellee's certification for a conditional release cannot but have been arbitrary and capricious. Accordingly, the District Court erred in holding that appellant had failed to sustain his burden of proving that appellee's action in denying certification was arbitrary and capricious.

CONCLUSION

It is submitted that appellant, who is not now in a condition in which he is dangerous to himself or others, should have his Writ of Habeas Corpus granted and be given a conditional release appropriate for enabling him to arrange the circumstances under which that condition will be maintained in the reasonable future.

Respectfully,

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REPLY BRIEF FOR APPELLANT

in the

UNITED STATES COURT OF APPEALS
for the District of Columbia Circuit

September Term, 1965

No. 19,815

MEYER CAPLAN,

Appellant,

v.

DALE C. CAMERON, Superintendent,
St. Elizabeth's Hospital,

Appellee.

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States Court of Appeals)

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No. 19,815 September Term, 1965

MEYER CAPLAN,

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v.

DALE C. CAMERON, Superintendent,
St. Elizabeth's Hospital,

Appellee.

REPLY BRIEF FOR APPELLANT

ARGUMENT

The Issue Is Not as to the Reasonableness of Appellee's Conditions per se but Whether Appellee Acted Arbitrarily and Capriciously in Making Those Conditions a Prerequisite to a Conditional Release.

As indicated by the inclusion of a Counter-statement of the Case in Appellee's brief (Br. 1-5), the parties, while not differing substantially as to the applicable law, do differ as to the facts allegedly established by the testimony at the hearing in the District Court and the conclusions to be drawn therefrom.

Appellee's contention that he did not act arbitrarily and capriciously in denying appellant a conditional release, is rested on the following premises:

(1) That appellant is suffering from the mental disease known as paranoid schizophrenia;

(2) That if released at this time without having previously arranged for a job and stable living conditions, appellant will be dangerous to himself or others; and

(3) That appellant "in the medical opinion of his doctors" is not yet sufficiently recovered to allow his conditional release to search for a job and living quarters but, when so recovered, will be recommended for an appropriate release.

Appellant concedes the first of the foregoing premises but contends that the second and third are not supported by the evidence adduced at the hearing. And he bases this contention not on his own testimony but entirely on the testimony of appellee's witness, Dr. Schwartz.

There is no evidence that appellant is now dangerous to himself or others. On the contrary, the record is plain that the symptoms of appellant's mental disease are now in remission (Tr. 34) and that, while likely to recur under less stress than a normal person can withstand, absent such stress

a paranoid schizophrenic in appellant's present state is no more dangerous to himself or others than a sane person (Tr. 46). In appellant's case, the critical factors are a job and stable living conditions, the evidence establishing that, with a job and stable living conditions, the symptoms of appellant's psychosis would remain in remission and he would not in the reasonable future be dangerous to himself or others.(Tr. 37, 38, 45) However, since he is not now so dangerous, the evidence did not and could not establish that appellant would be dangerous in the foreseeable future to himself or others if he were released to seek a job and stable living conditions and the finding of the job and living conditions within a time calculated by appellee not to produce undue stress were made a condition subsequent to the release. This is the conditional release that appellant here seeks and that, in refusing, appellee is contended to have acted arbitrarily and capriciously.

That appellee has acted arbitrarily and capriciously in refusing appellant a conditional release until certain safeguards are satisfied is plain from the record as a whole and especially plain from the safeguards listed in the Counterstatement (Br. 4, 5) in reliance upon an answer of Dr. Schwartz during his direct examination (Tr. 38). As listed, these safeguards are a sure job; some assurance of help from his family; and some relations with friends which he apparently

did not have previously. As to these safeguards, Dr. Schwartz conceded on cross examination that, with all appellant's contacts in Baltimore, it would be very difficult for him to find a sure job while confined in St. Elizabeth's Hospital. (Tr.46) The second safeguard plainly is impossible of fulfillment, whether or not appellant is released, the evidence establishing that the only person in appellant's family from whom he might obtain assistance, his brother, now "does not want to have anything to do with him." (Tr. 36) And the third obviously is a safeguard that appellant could satisfy only <u>after</u> his release, it being impossible for appellant, who apparently had none before, otherwise to establish "some relations with friends."

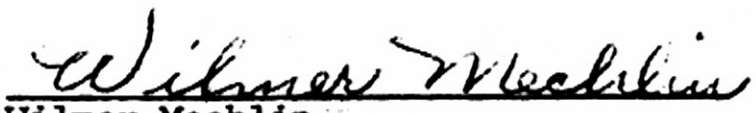
Lastly, there is the contention in appellee's brief, in excuse of the refusal to recommend a conditional release, that "in the medical opinion of his doctors" appellant is not yet sufficiently recovered to search for a job and living quarters but, when so recovered, will be recommended for appropriate release. (Br. 10) From whence this contention was derived by appellee is not suggested in his brief, but, certainly, it was not derived from the testimony at the hearing. On the contrary, the evidence established that, while the psychosis can be in remission, a paranoid schizophrenic never recovers from his mental disease. (Tr. 46) Appellant's psychosis

now being in remission, insofar as Title 24, D. C. Code 301(d) (1961 Ed.) is concerned, he is as ready now, as ever, for a conditional release

CONCLUSION

For the reasons stated here and in his main brief, appellant should have his Writ granted and at this time be given a conditional release.

Respectfully,



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BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,815

MEYER CAPLAN, APPELLANT

v.

DALE C. CAMERON, SUPERINTENDENT, SAINT ELIZABETHS HOSPITAL, APPELLEE

Appeal from the United States District Court for the District of Columbia

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DAVID G. BRESS,
United States Attorney.

FRANK Q. NEBEKER,
ROBERT KENLY WEBSTER,
Assistant United States Attorneys.

H.C. 405-65

QUESTION PRESENTED

In the opinion of appellee, the following question is presented:

Did the Superintendent of the Hospital to which appellant had been committed following a finding of not guilty by reason of insanity on a charge of assault with a dangerous weapon act arbitrarily or capriciously in denying appellant a conditional release, and did the court below err in upholding the action of the Superintendent,

1) where appellant, with a history of four mental commitments, two of which were for crimes of violence, admittedly was not a proper candidate for an unconditional release;

2) where the uncontradicted evidence showed that appellant suffered from an abnormal mental condition that would make him dangerous to the community or to himself in the reasonably foreseeable future if released without safeguards;

3) and where the expert opinion—no evidence being adduced to the contrary—demonstrated that a reasonable prerequisite to conditional release would be a job and stable living conditions?

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FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,815

MEYER CAPLAN, APPELLANT

v.

DALE C. CAMERON, SUPERINTENDENT, SAINT ELIZABETHS HOSPITAL, APPELLEE

Appeal from the United States District Court for the District of Columbia

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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

a. *Case History*

Appellant was arrested on November 14, 1964 for assault with a dangerous weapon (22 D.C. Code § 502); was indicted on December 14 for this offense; pled not guilty four days later; was found not guilty by reason of insanity on February 24, 1965 by District Court Judge George L. Hart, Jr.;[1] and was immediately committed to

[1] No appeal having been taken, the testimony at trial was not transcribed and the details of appellant's felonious assault are not available.

Saint Elizabeths Hospital under the mandatory provisions of 24 D.C. Code § 301(d).

The groundwork for appellant's successful insanity defense was laid by a motion of defense counsel on November 30, 1964 (before indictment) for a 90 day mental examination at Saint Elizabeths Hospital, the hospital of his current confinement. By letter dated January 21, 1965 the Hospital certified appellant was mentally competent to stand trial[2] and diagnosed him as suffering from "a mental disorder, Schizophrenic Reaction, Paranoid Type", noting further that the alleged offense was a product of this mental disorder.

Some six months following his commitment, appellant, *pro se*, filed a Motion for a Writ of Habeas Corpus, dated August 24, 1965. He sought unconditional or conditional release under 24 D.C. Code § 301(e) and asserted that the Superintendent of the hospital acted arbitrarily in refusing his request. Appellant was granted leave to proceed *in forma pauperis*, the lower court issued an Order to Show Cause, the Hospital filed a Return dated September 10 and appellant filed a "Rebuttal" dated September 16.

Following a full hearing on October 11, 1965, at which appellant appeared personally and was represented by counsel, Judge Howard F. Corcoran dismissed the petition finding, *inter alia*, that appellant "is suffering from an abnormal mental condition, Schizophrenic Reaction, Paranoid Type", that he "would be dangerous to himself or others if released into the community", and that he has not been certified eligible for release by the Superintendent of the Hospital.[3] Therefore, Judge Corcoran concluded that appellant had failed to sustain his burden of

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[2] An Order dated February 4, 1965 found appellant competent to stand trial, to understand the proceedings against him and to assist in his own defense. The Order specifically noted that there was no objection by the Government, by appellant or by his counsel.

[3] Findings of Fact and Conclusion of Law of Judge Corcoran dated October 15, 1965.

proving eligibility for release, and had failed to show that the Superintendent acted arbitrarily or capriciously.

The instant appeal is taken from Judge Corcoran's dismissal of the petition. Appellant, by implication concedes the inappropriateness of unconditional release since his only request to this Court is to compel his conditional release (App. Br. 12).

b. *The Hearing*

At the hearing appellant and Dr. Schwartz of the psychiatric staff of Saint Elizabeths Hospital were the only witnesses. Dr. Schwartz discussed the possibility of a conditional release but opposed unconditional release of his patient and opposed any conditional release without specific prerequisites, which appellant had not met, fearing that otherwise "the stresses . . . very likely would again precipitate psychosis which would make him dangerous to himself or others" (Tr. 4, 33).

Appellant's lengthy history of mental illness reveals four commitments to mental institutions, two of which resulted from felonious assaults: 1938, Sheppard Enoch Pratt Hospital, Towson, Md. (voluntary); 1940, Springfield State Hospital, Maryland (voluntary); 1961, Clifton T. Perkins Hospital, Maryland (while awaiting criminal charges involving an assault with a gun); and 1965, the current confinement resulting from his assault with a knife (Tr. 15-16, 33).

The diagnosis of Dr. Schwartz, which was consistent with the diagnosis resulting from the original mental examination prior to trial, classified appellant as suffering from chronic schizophrenic reaction, paranoid type (Tr. 33, 37, 38). The Doctor readily noted that the symptoms of illness were then in remission, a fact that was not true on the date of appellant's admission to John Howard Pavilion of the Hospital. He added, however, that it is consistent with schizophrenic behavior which, as in the instant case, ordinarily extends over long periods of time,

to be punctuated by periods of normal behavior (Tr. 34, 35). He therefore cautioned that "under stress he [appellant] would again develop these delusional feelings . . . [think] people are after him, and then he is going to take action against them" (Tr. 37).

Appellant, while committed, has and will continue to receive as part of his hospital treatment group therapy, individual therapy from a social worker, and the drug Serpasil, primarily administered for a high blood pressure condition[4] (Tr. 40, 43-44). Environmental factors contributing to appellant's improvement, apart from the medical treatment which had been beneficial, were listed by Dr. Schwartz as including a regularly scheduled life; a removal of the stress caused by the problems of making a living; the security of having all needs provided; and no opportunity to drink (Tr. 35).[5] As a result, appellant "made a good adjustment on the ward" (Tr. 39), was no longer delusional or disoriented and looked at life "somewhat more realistically" (Tr. 38, 40). However, he was still "quite vague", continued to expect that others were going to take care of his needs, lacked definite ideas of how he was going to take care of himself and in this sense, was not being very realistic (Tr. 38, 39). For these reasons the Doctor felt that if released without certain safeguards he would be dangerous to others (Tr. 37). The suggested safeguards, none of which appellant has satisfied, are 1) a sure job; 2) some assurance of help from his family;[6] and some relations with friends which

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[4] Dr. Schwartz testified that any effect appellant's high blood pressure might have on his mental disease would diminish as the blood pressure decreased and that the medication was mainly for the hypertension, which existed upon admission to the Hospital but which had since declined, rather than for the mental condition (Tr. 39-40, 43).

[5] Dr. Schwartz stated that prior to his hospital admission appellant had been drinking which "did make or increase the possibility of the psychosis developing or decreasing his resistance actually to the development of symptoms" (Tr. 35).

[6] Appellant's family evidently consists only of one brother who lives in Baltimore and with whom appellant admittedly has had a

he apparently did not have previously (Tr. 38). Emphasizing particularly the importance of a job, Dr. Schwartz warned that if released without one, appellant would become "fearful", would regenerate "feelings of inadequacy", would again blame others for his own deficiencies and would take action against them (Tr. 37). The job would have to be one that was "not very stressful" and one that appellant was "able to handle" (Tr. 45). It is significant that appellant was not working at the time he committed his two criminal acts resulting in hospitalization, although he had been employed shortly prior to each incident (Tr. 30-31). Further, despite appellant's ties in Baltimore, Dr. Schwartz would not recommend appellant for conditional release to go there (Tr. 21, 41).

Appellant, considering himself "an entirely new person" (Tr. 18), testified in effect that he was ready for release. He knew his doctor and social worker and described his treatment (Tr. 22-24). He sketched his previous life stating that he was 47 years old (Tr. 4), that his center of gravity was in Baltimore (Tr. 21), that he had an eighth grade education but had attended night school, sometimes at the University, for eleven years (Tr. 9, 10), and that he had had several jobs including a business of his own (Tr. 10-13). He intimated that the pressures of business failure were in part responsible for the incident in which he procured a gun and threatened his brother's foreman before it was taken from him (Tr. 13-15). As to the crime which resulted in his conviction in Washington, he admitted that he had attacked parking lot attendant with a knife (Tr. 5, 27). His purpose in coming to Washington was to see the F.B.I. because he felt the Mafia was after him (Tr. 17-18, 37).

If released, appellant said he would get a bus to Baltimore, find a room and a job as a collector salesman (Tr. 19).

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bad relationship in the past (Tr. 29) and a cousin in Washington who he describes only as "very poor" and who evidently would not be of assistance to him (Tr. 21).

STATUTE INVOLVED

Title 24, District of Columbia Code, § 301(d) and (e) provide in pertinent part:

> *Commitment of persons of unsound mind to the District of Columbia General Hospital—Certification to the Court—Acquittal by jury on grounds of insanity—Confinement in a mental institution—Conditions for release after confinement—Conditional release—Expenses—Writ of habeas corpus—Inconsistent provisions of Federal Statutes superseded.*
>
> * * *
>
> (d) If any person tried upon an indictment or information for an offense, or tried in the juvenile court of the District of Columbia for an offense, is acquitted solely on the ground that he was insane at the time of its commission, the court shall order such person to be confined in a hospital for the mentally ill.
>
> (e) Where any person has been confined in a hospital for the mentally ill pursuant to subsection (d) of this section, and the superintendent of such hospital certifies (1) that such person has recovered his sanity, (2) that, in the opinion of the superintendent, such person will not in the reasonable future be dangerous to himself or others, and (3) in the opinion of the superintendent, the person is entitled to his unconditional release from the hospital, and such certificate is filed with the clerk of the court in which the person was tried, and a copy thereof served on the United States Attorney or the Corporation Counsel of the District of Columbia, whichever office prosecuted the accused, such certificate shall be sufficient to authorize the court to order the unconditional release of the person so confined from further hospitalization at the expiration of fifteen days from the time said certificate was filed and served as above; but the court in its discretion may, or upon objection of the United States or the District of Columbia shall, after due notice, hold a hearing at which evi-

dence as to the mental condition of the person so confined may be submitted, including the testimony of one or more psychiatrists from said hospital. The court shall weigh the evidence and, if the court finds that such person has recovered his sanity and will not in the reasonable future be dangerous to himself or others, the court shall order such person unconditionally released from further confinement in said hospital. If the court does not so find, the court shall order such person returned to said hospital. Where, in the judgment of the superintendent of such hospital, a person confined under subsection (d) above is not in such condition as to warrant his unconditional release, but is in a condition to be conditionally released under supervision, and such certificate is filed and served as above provided, such certificate shall be sufficient to authorize the court to order the release of such person under such conditions as the court shall see fit at the expiration of fifteen days from the time such certificate is filed and served pursuant to this section: *Provided*, That the provisions as to hearing prior to unconditional release shall also apply to conditional releases, and, if, after a hearing and weighing the evidence, the court shall find that the condition of such person warrants his conditional release, the court shall order his release under such conditions as the court shall see fit, or, if the court does not so find, the court shall order such person returned to such hospital.

SUMMARY OF ARGUMENT AND ARGUMENT

The action of the Superintendent in refusing to admit appellant to conditional release where appellant had not met reasonably prescribed conditions was not arbitrary or capricious and the lower court therefore properly dismissed the petition for a writ of habeas corpus.

(Tr. 15, 26, 27, 33, 36, 37)

Appellant has been four times in mental hospitals, twice in the past five years as a result of committing

crimes of violence. (Tr. 15, 26, 27, 33). While his schizophrenia, paranoid type, is currently in remission, his hospital psychiatrist was of the opinion that at the time of the hearing an unfettered release, or a release without definite plans for living and working, "would again precipitate psychosis which would make him dangerous to himself or others" (Tr. 33; see also 36, 37). The Court below, after hearing the testimony, agreed. Considering the two arrests involving felonious assaults with a gun and with a knife, respectively, the "danger" is not mere speculation. Dr. Schwartz at no time testified that appellant was sane; he at all times emphasized the danger of releasing appellant without certain safeguards. No testimony was introduced by appellant to show that he would not be dangerous to himself or others in the reasonably foreseeable future if released on conditions other than those prescribed by Dr. Schwartz. Under these circumstances, the Superintendent was hardly arbitrary or capricious in refusing to release appellant except on reasonable conditions that he had not met.

In the proceeding below it was appellant's burden to establish his eligibility for release under 24 D.C. Code § 301(e). *Overholser* v. *Leach*, 103 U.S. App. D.C. 289, 257 F.2d 667 (1958), *cert. denied*, 359 U.S. 1013 (1959). He failed to show that the action of the Superintendent in refusing his release was arbitrary or capricious. *Ibid; accord, Overholser* v. *O'Beirne*, 112 U.S. App. D.C. 267, 302 F.2d 852 (1961).[6]

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[6] The usual standard of proof in civil proceedings—a preponderence of evidence—is not applicable here. Appellant must show that no reasonable doubt exists that he will be dangerous to the public or to himself in the reasonably forseeable future. *Ragsdale* v. *Overholser*, 108 U.S. App. D.C. 308, 312, 281 F.2d 943, 947 (1960); but see *Hough* v. *United States*, 106 U.S. App. D.C. 192, 195, 271 F.2d 458, 461 (1959), where the Court, speaking through Chief Judge Bazelon, seems to suggest that the matter ought to be left to the sound judgment of the trial court; to the same effect see also, *Overholser* v. *Russell*, 108 U.S. App. D.C. 400, 404, 283 F.2d 195, 199 (1960) (dissenting opinion of Chief Judge Bazelon).

The standard for unconditional releases was set down in the landmark decision of *Overholser* v. *Leach*:

> There must be freedom from such abnormal mental condition as would make the individual dangerous to himself or the community in the reasonably foreseeable future." 103 U.S. App. D.C. at 292, 257 F.2d 670 (footnotes omitted).

accord, *Overholser* v. *O'Beirne*, *supra*; *Ragsdale* v. *Overholser*, *supra*; *Overholser* v. *Russell*, *supra*; see also *Starr* v. *United States*, 105 U.S. App. D.C. 91, 264 F.2d 377 (*en banc*), *cert. denied*, 359 U.S. 936 (1958). The language in the *Leach* opinion which relates to danger is, of course, a paraphrase of the language of the statute, which reads "will not in the reasonable future be dangerous to himself or others." 24 D.C. Code § 301(e). This danger standard has also been specifically applied to conditional releases. *Hough* v. *United States*, *supra*. See also *Isaac* v. *United States*, 109 U.S. App. D.C. 34, 38, 284 F.2d 168, 172 (1960).

To be considered dangerous within the meaning of section 301(e), it is not necessary that the act which the patient may commit be an act of violence. *Overholser* v. *Russell*, *supra*. In the *Russell* case the patient had been tried for forgery and found not guilty by reason of insanity. This Court, in reversing the lower court's order discharging the patient, noted that the statute is satisfied if an individual may commit any criminal act, for this in itself will injure others and subject the wrong-doer to arrest, trial and conviction. Reason dictates that one with a proclivity to violence should be treated even more carefully. In fact, this Court has held that one having an abnormal mental condition similar to appellant's (schizophrenia, paranoid type) who had committed one violent act was considered within the statutory category of those who could be dangerous to herself or others and whose conditional release should, if granted at all, be closely supervised. *Hough* v. *United States*, *supra*.

This Court in the *Leach* decision observed that appellant is one of an "exceptional class of people". It is a class whose standards for release are not that of civil commitment; it is a class to be treated differently from those who have not committed offenses but have similar mental conditions. *Overholser* v. *Leach, supra,* at 291-92; 257 F.2d 669-70. Thus "The *twofold* purpose of the mandatory hospital confinement must never be overlooked, first, recovery of the patient and second, protection of society and the patient." *Overholser* v. *O'Beirne, supra,* at 269; 302 F.2d 854. (Emphasis in the original). The instant statute, in short, should be implemented "to provide treatment and cure for the individual in a manner which affords reasonable assurance for public safety." *Hough* v. *United States, supra,* at 195, 271 F.2d at 461. Public safety and the safety of appellant demand that he first meet the requirements set down by Dr. Schwartz before being granted a relaxation of his restraint. Otherwise, as all the evidence shows, the risks of danger are great.

Appellant is not convincing in his argument that, in effect, his layman's opinion ought to overrule the expert opinion in this case and that he ought to be released without meeting the recommended prerequisites. While the statute is silent on confinement and treatment, the spirit of the statute is to leave rehabilitative therapy to the hospital for it "is clearly the province of the hospital alone." *Hough* v. *United States, supra,* at 196; 271 F.2d at 462. That a job might be rehabilitative to appellant, is clear. But appellant, in the medical opinion of his doctor, is not yet sufficiently recovered to allow him to be conditionally released to search for a job and living quarters. When appellant is sufficiently recovered he will be recommended for an appropriate release.

Appellant concedes on appeal that he is not entitled to an unconditional release. A conditional release is more difficult to justify than an unconditional release for the Superintendent must determine that it would be safe to

release the patient, although still insane, under supervision. It is easier to believe that a sane person will not be dangerous than to believe an insane person will not be. See *Hough* v. *United States, supra,* at 199, 271 F.2d at 465 (dissenting opinion). Should any doubt remain that appellant must be refused a conditional release unless he first meets the prerequisites which the medical expert deemed vital to public safety and his patient's safety, this doubt should vanish in the warning of this Court that:

> A patient may have improved materially and appear to be a good prospect for restoration as a useful member of society; but if an "abnormal mental condition" renders him potentially dangerous, reasonable medical doubts or reasonable judicial doubts are to be resolved in favor of the public and in favor of the subject's safety. *Ragsdale* v. *Overholser, supra,* at 312, 281 F.2d at 947.

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court should be affirmed.

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